

ORDINANCE

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 7 OF
THE SAN DIEGO MUNICIPAL CODE BY AMENDING
DIVISION 38, SECTIONS 67.3801, 67.3803, 67.3804, 67.3806,
67.3807, 67.3807, 67.3808, 67.3809, 67.3810, and 67.3811 ALL
RELATING TO EMERGENCY WATER REGULATIONS.

§67.3801 Declaration of Emergency

- (a) That the City Manager be, and he is hereby authorized to determine and declare that a water shortage emergency exists in any and/or all parts of The City of San Diego, and upon such determination, to promulgate such regulations, rules and conditions relative to the time of using water, the purpose or purposes for which it may be used, and such other necessary limitations as will, in his opinion, relieve the water shortage in any such section or sections of The City, consistent with the provisions of this Division.
- (b) It is hereby declared that, because of the conditions prevailing in the City of San Diego, the general welfare requires that the City maximize the beneficial use of its available water resources to the extent to which they are capable, and that the waste or unreasonable use, or unreasonable method of use of water be prevented and the conservation of such water is to be extended with a view to the reasonable and beneficial use thereof in the interests of the people of the City of San Diego and for the public welfare.

§67.3802 Comprehensive Water Conservation Plan

There is hereby established a City of San Diego Comprehensive Water Conservation Plan.

§67.3803 Definitions

- (a) **"Base Period"** means that period of time over which the base is computed.
- (b) **"Base"** means the amount of water used on a customer's premises during the corresponding billing period from the most recent year when no water conservation phase was in effect. Any customer who was not a customer on the premises for which service was billed by the Department during the base period shall be assigned the same base for such or similar premises as provided above, and the Department shall have the further discretion to adjust such base in the event such customer's use of the premises is substantially different from the previous use thereof during the base period.

§67.3804 Water Conservation Plan Implementation and Termination

- (a) The Water Department shall monitor and evaluate the projected supply and demand for water by its customers monthly, and shall recommend to the City Manager and City Council the extent of the conservation required by customers of the Water Department in order for the Department to prudently plan for and supply water to its customers. The Water Department shall issue a report to City Council regarding its anticipated

annual supply of water and demand from its customers annually. If the Water Department's annual water supply report or monthly monitoring indicates a shortfall in water in an amount stated below, the City Council shall declare and the City Manager must implement the following water conservation phases:

- (1) A Stage 1 **Water Watch** (voluntary compliance) shall be declared when the Water Department's annual report or monthly monitoring indicates there is a possibility that the City's demand for water will exceed its water supply by 5%;
- (2) A Stage 2 **Water Alert** (mandatory compliance) shall be declared when the Water Department's annual report or monthly monitoring indicates there is a probability that the City's demand for water will exceed its water supply by 10%;
- (3) A Stage 3 **Water Warning** (mandatory compliance) shall be declared when the Water Department's annual report or monthly monitoring indicates there is a probability that the City's demand for water will exceed its water supply by 30%;
- (4) A Stage 4 **Water Emergency** (mandatory compliance) shall be declared immediately upon the occurrence of any of the following events:

- (A) When the Water Department's annual report or monthly monitoring indicates there is a probability that the City's demand for water will exceed its water supply by 50% or more;
 - (B) A major failure of either the Water Department's or San Diego County Water Authority's water distribution system;
 - (C) A major failure of the Southern California Metropolitan Water District's, or California State Water Project's water distribution system.
- (b) When the Water Department's annual water supply report or monthly monitoring indicates that the City's demand for water is less than the City's water supply, the Water Department and the City Manager shall recommend to the City Council the termination of customer curtailment phase in effect. Said termination shall take effect upon the concurrence of the City Council.

§67.3805 Application

- (a) The provisions of this Section shall apply to all persons, customers and property served by the Water Department wherever situated; except as provided in section 67.3805(b).
- (b) The use of potable water for industrial manufacturing, processing, or research and development is exempt from the provisions of section 67.3806, if all of the following conditions are met: 1) the business is one

of the types of businesses described in categories 2000 through 3999, 7390, and 8730 of the Standard Industrial Classification Code, a copy of which is on file with the Office of the City Clerk as Document No. 00-18596-1; 2) the business is located in an area where reclaimed water is available; 3) the business uses reclaimed water on its premises to the full extent possible; and 4) the business participates in all applicable City water conservation programs that are considered Best Management Practices by the California Urban Water Conservation Council. A list of the City's water conservation programs that are Best Management Practices is on file with the Office of the City Clerk as Document No. 00-18596-2.

§67.3806 Water Conservation Stages

It is unlawful for any customer of The City of San Diego Water Department to make, cause, use or permit the use of water from the City for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to any provision of this Division, or in an amount in excess of that use permitted by the following conservation stages which are in effect pursuant to action taken by the City Manager, or his designee, in accordance with this Division.

(a) Permanent Water Conservation measures

It is unlawful for any person to waste water or to use it unreasonably.

Unreasonable uses of water shall include, but are not limited to, the following practices:

- (1) A customer shall not let water leave the customer's property by drainage onto adjacent properties or public or private roadways or streets due to excessive irrigation and/or uncorrected leaks.
- (2) A customer will not fail to repair a water leak.
- (3) A customer will not use water to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate safety or sanitation hazards.

(b) Stage 1. Voluntary Compliance - Water Watch

(c) Stage 2. Mandatory Compliance - Water Alert.

Upon implementation by the City Manager and publication of notice, the following water conservation measures shall apply during Stage 2 except when reclaimed water is used:

- (1) Lawn watering and landscape irrigation, including construction meter irrigation, is permitted only during designated hours on designated days. Watering is permitted at any time if:
 - (A) A hand-held hose equipped with a positive shut-off nozzle is used, or
 - (B) A hand-held container is used, or

(C) A drip irrigation system is used.

Commercial nurseries, commercial sod farms and similarly situated establishments are exempt from Stage 2 irrigation restrictions but will be required to curtail all nonessential water use.

(2) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment, is permitted at any time with a hand-held bucket or a hand-held hose equipped with a positive shut-off nozzle for quick rinses.

Washing may be done at any time on the immediate premises of a commercial car wash or commercial service station, or by a mobile car wash or on-site car wash using high pressure washing equipment. Further, such washings are exempted from these regulations where the health, safety and welfare of the public is contingent upon frequent vehicle cleanings, such as garbage trucks and vehicles to transport food and perishables.

(3) The overfilling of swimming pools, spas, ponds and artificial lakes is prohibited.

(4) Irrigation of golf courses, parks, school grounds and recreation fields is permitted only during designated hours on designated days.

- (5) Use of water from fire hydrants shall be limited to fire fighting, related activities or other activities necessary to maintain the health, safety and welfare of the citizens of San Diego.
 - (6) All restaurants are prohibited from serving water to their customers except when specifically requested by the customers.
 - (7) Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire or sanitation hazards.
 - (8) Ornamental fountains may operate if they recirculate water. Ornamental fountains that do not recycle water are prohibited.
 - (9) Construction operations receiving water from a construction meter or water truck shall not use water unnecessarily for any purposes other than those required by regulatory agencies. Construction projects requiring watering for new landscaping materials should adhere to the designated irrigation hours associated with subsection (1) of Stage 2.
 - (10) No customer shall make, cause, use or permit the use of potable water from the Department for any purpose in an amount in excess of 90% of the amount used the during the Base Period.
- (d) Stage 3. Mandatory Compliance - Water Warning.
- Upon implementation by the City Manager and publication of notice, the following water conservation measures shall apply during Stage 3 except when reclaimed water is used:

- (1) Lawn watering and landscape irrigation, including with a hand-held hose equipped with a positive shut-off nozzle, is permitted only during designated hours on designated days. Watering is permitted at any hour, on any day, if a hand-held container or drip irrigation system is used.
- (2) Commercial nurseries shall reduce water use by an amount determined by the City Council.
- (3) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment is permitted only during designated hours on designated days with a hand-held bucket or a hand-held hose equipped with a positive shut-off nozzle for quick rinses. Washing is permitted at any time on the immediate premises of a commercial car wash. The use of water by all types of commercial car washes not using partially reclaimed or recycled water shall be reduced in volume by an amount determined by the City Council. Further, such washings are exempt from these regulations where the health, safety and welfare of the public is contingent upon frequent vehicle cleanings, such as garbage trucks and vehicles to transport food and perishables.
- (4) The overfilling of swimming pools and spas is prohibited. The filling or refilling of ponds and artificial lakes is prohibited.

- (5) Watering golf courses, parks, school grounds and recreation fields is permitted only during designated hours on designated days, except golf course greens.
- (6) Use of water from fire hydrants shall be limited to fire fighting or other activities immediately necessary to maintaining the health, safety and welfare of the citizens of San Diego.
- (7) All restaurants are prohibited from serving water to their customers except when specifically requested by the customers.
- (8) Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire or sanitation hazards.
- (9) The operation of any ornamental fountain or similar structure is prohibited except for short periods of time to prevent damage.
- (10) The number of new construction meters shall not exceed the existing number of currently authorized meters. A new meter shall be issued only when an old meter is returned. Construction projects requiring water from a construction meter or a water truck shall not use water unnecessarily for any purposes other than those required by regulatory agencies. Construction projects requiring water for new landscapes shall adhere to the designated days and times as set forth in subsection (1) of Stage 2. Further, construction projects necessary to maintaining the health, safety and welfare of the public are exempt from these regulations.

(11) The use of water for commercial manufacturing or processing purposes shall be reduced in volume by an amount determined by the City Council. This provision does not apply to businesses which are exempt from water use restrictions pursuant to section 67.3805(b).

(12) No customer shall make, cause, use or permit the use of potable water from the Department for any purpose in an amount in excess of 70% of the amount used during the Base Period.

(e) Stage 4. Mandatory Compliance - Water Emergency

Upon implementation by the City Manager and publication of notice, the following measures shall apply in Stage 4 except when reclaimed water is used:

(1) All outdoor irrigation of turf and ground covers is prohibited with the exception of plant materials classified to be rare, exceptionally valuable or essential to the well being of the public at large or rare animals. Irrigation of trees and shrubs is permitted only by hand-held hose equipped with a positive shut-off nozzle, hand-held container, or drip irrigation system. Greywater may be used in accordance with Health Department regulations to irrigate fruit trees, ground covers and ornamental trees and shrubs. Greywater is defined as household wastewater other than toilet waste.

- (2) The use of water at commercial nurseries, commercial sod farmers and similarly situated establishments shall be reduced in volume by an amount determined by the City Council. Greywater may be used in accordance with Health Department regulations to irrigate fruit trees, ground covers and ornamental trees and shrubs.
- (3) The washing of automobiles, trucks, trailers, boats, airplanes and other types of mobile equipment is prohibited. The use of water by all types of commercial car washes or commercial vehicle service stations and not in the immediate interest of the public health, safety and welfare shall be reduced in volume by an amount determined by the City Council. Further, such washings are exempt from these regulations where the health, safety and welfare of the public is contingent upon frequent vehicle cleanings such as garbage trucks and vehicles used to transport food and perishables.
- (4) The filling, refilling or adding of water to swimming pools, spas, ponds and artificial lakes is prohibited.
- (5) The watering of all golf course areas, except greens, is prohibited.
- (6) Use of water from fire hydrants shall be limited to fire fighting or other activities immediately necessary to maintain the health, safety and welfare of the citizens of San Diego.
- (7) All Restaurants are prohibited from serving water to their customers except when specifically requested by the customers.

- (8) Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire or sanitation hazards.
- (9) The operation of any ornamental fountain or similar structure is prohibited except for short periods of time to prevent damage.
- (10) The use of water for commercial, manufacturing or processing purposes shall be reduced in volume by an amount determined by the City Council.
- (11) All sales of non-reclaimed water outside of the City limits shall be discontinued, with the exception of sales previously approved by the City Council.
- (12) No new construction meters will be issued. Construction water shall not be used for earth work or road construction purposes. Construction projects necessary to maintaining the health, safety and welfare of the public are exempt from these regulations.
- (13) Except as to property for which a building permit has been heretofore issued, no new building permit(s) shall be provided, except in the following circumstances:
 - (A) For projects necessary to protect the public's health, safety, and welfare;
 - (B) When using reclaimed water;
 - (C) When the recipient of the building permit can demonstrate that no net increase in water use will occur; or

(D) Where the recipient of the building permit provides a conservation offset. For purposes of the section, “conservation offset” shall mean the implementation of proven conservation techniques which, when installed, will result in a reduction equal to demand of the proposed use. A conservation offset may be effected by paying a fee established by the City Manager or his designee to the City Treasurer in an amount necessary to cover the cost of implementing such conservation techniques. The fee will be based on the conservation offset required for an equivalent dwelling unit. Such fee shall apply to residential as well as commercial and industrial buildings, and may be adjusted from time to time as determined by the City Manager or his designee.

(14) No customer shall make, cause, use or permit the use of water from the Department for any purpose in an amount in excess of 50% of the amount used during the Base Period.

§67.3807 Mandatory Conservation Monitoring

The Water Department shall monitor the projected supply and demand for water, by its customers, on a daily basis during periods of emergency or drought and shall recommend to the City Manager the extent of the conservation required through the implementation and/or termination of particular conservation stages to prudently plan and supply water to its customers. Thereafter, the City Manager

may recommend a stricter water conservation stage or termination of the appropriate phase of water conservation in accordance with this Division. The declaration of any stage beyond Stage 1 shall be made by public announcement and shall be published a minimum of one (1) time for three (3) consecutive days in a daily newspaper of general circulation. The stage designated shall become effective immediately upon announcement.

§67.3808 Relief from Compliance

(a) **Administrative Relief.** Any customer who reasonably believes the application of any of the provisions of this Division as the same relate to him to be unjust or inequitable may seek relief as set forth below. The Department shall have the power, upon the filing by a customer of an application for relief as herein provided, to take such steps as it deems reasonable and to use such procedures as it considers necessary to resolve said application for relief prior to the submission of said application to a conservation appeal board.

In determining whether relief shall be granted, the Department shall consider whether the denial of relief would be unjust or inequitable and shall take into consideration all relevant factors including, but not limited to:

- (1) Whether any additional reduction in water consumption will result in unemployment;
- (2) Whether additional members have been added to the household;

- (3) Whether there is an increase in the size of the landscape with the customer's property since the base year;
- (4) Changes in vacancy factors in multi-family housing;
- (5) Increased number of employees in commercial, industrial, and governmental offices;
- (6) Increased production requiring increased water use for manufacturing, processing or research and development;
- (7) Adjustments to water use caused by emergency health or safety hazards;
- (8) Water use necessary for reasons related to family illness or health;
- (9) The special needs and characteristics of hospitals, clinics and other medical care facilities.

No relief shall be granted to any customer for any reason in the absence of a showing by the customer that the customer has achieved the maximum practical reduction in water consumption in the customer's residential, commercial, industrial, agricultural or governmental water consumption, as the case may be, other than in the specific area in which relief is being sought.

No relief shall be granted to any customer who, when requested by the Department, fails to provide the Department with information whereby the services provided to the customer can be classified for the purpose of establishing an appropriate base or classification pursuant to this Division.

If a resolution of the application for relief is mutually agreed upon between the Department and the customer, the agreement and fact of concurrence therewith shall be in writing subscribed by the customer. No further appeal may be taken by the customer on the same, or substantially similar, circumstances and facts.

- (b) **Base Adjustment.** The Department, in its discretion, may adjust the Base assigned to any customer if that customer establishes, to the satisfaction of the Department, that the Base, as herein provided, would cause great hardship for reasons including, but not necessarily limited to, technological improvements to that customer's premises since the Base Period, increased employment on said customer's business premises since the Base Period, a significant change in either the manner or the extent of use of water at the location in question since the Base Period, extreme fluctuations in weather conditions, increase in business volume directly related to water use, and occupancy factors occurring since the Base Period.
- (c) **Reclassification.** The Department may reclassify any residential, commercial, industrial, or agricultural customer to any other classification upon a showing of good cause by said customer of why all customers similarly situated should be so reclassified.
- (d) **Representation.** The Department shall develop and implement procedures to allow an authorized representative of a trade, business or professional association, of which the customer is a member, to represent, with the consent of the customer, its members who are customers of the Department in any hearing held pursuant to this Section.

(e) **Conservation Appeal Boards.**

- (1) The City Manager shall establish such number of residential and non-residential conservation appeal boards as deemed necessary to effectuate the provisions of this Division.
 - (A) Each non-residential conservation appeal board shall be composed of three members, one of which shall be selected from the business community, one of which shall be selected from the labor sector, and one of which shall be selected from the public at large.
 - (B) The residential conservation appeal boards shall be composed of three members selected from the public at large.
 - (C) Appeal board members shall be appointed by the City Manager and confirmed by the City Council.
 - (D) The City Manager and City Council shall establish such rules and regulations deemed reasonable and necessary to the formation, procedure and operation of such conservation appeal boards.
- (2) A customer may apply for a hearing before a conservation appeal board to review the Department's decision affecting the customer made pursuant to this Division. Said application shall automatically stay the Departmental action pending the decision of the conservation appeal board. No other or further stay shall be granted by the Department.

- (A) The conservation appeal board's review of the Department decision shall be limited to a determination whether, considering the merits of the decision, the denial of relief would be unjust or inequitable.
- (B) The conservation appeal board's decision shall be limited to upholding or to overturning in whole the Department's decision.
- (f) **Willful Misrepresentation.** It is unlawful for any person to willfully misrepresent a material fact to the Department or to any conservation appeal board established pursuant to this Division, for the purpose of securing relief from the provisions of this Division for any customer.

§67.3809 Penalty

- (a) For each violation by any customer of the water use curtailment provisions of this Section, a surcharge upon the customer's regular water bill shall be imposed in an amount equivalent to the unit rate charged to the City by the San Diego County Water Authority for excess water purchased. This amount shall be charged to the customer on that portion of the bill in excess of the limitations of this Division.
- (b) Penalties for any violation of this section besides those violations addressed in subsection (a) by any customer of the water use prohibitions shall be as follows:
 - (1) **First Violation.** The City shall issue a written notice to the customer of the fact of a first violation of any water shortage emergency whether it be Phase I, Phase II, Phase III, or Phase IV.

- (2) Second Violation. For a second violation during any water shortage phase, whether it be Phase II, Phase III, or Phase IV, the City shall impose a surcharge of \$25.00 upon the customer's regular water bill.
 - (3) Third and Subsequent Violations. For a third and each subsequent violation during any water shortage, whether it be Phase II, Phase III, or Phase IV, the City shall install a flow restricting device of one (1) gallon per minute capacity for services up to one (1) inch size, and comparatively sized restrictors for larger services, on the service of the customer at the premises at which the violation occurred for a period of not less than forty-eight (48) hours. The City shall charge the customer the reasonable costs incurred for installing and for removing the flow-restricting devices and for restoration of normal service. The charge shall be paid before normal service can be restored. In addition, a surcharge of \$50.00 shall be imposed upon the customer's regular water bill.
- (c) The City shall give notice of violation to the customer committing the violation as follows:
 - (1) Notice of violation of first violations of water use prohibitions of this section shall be given in writing by regular mail.
 - (2) Notice of second or subsequent violations of the water use prohibitions of this section shall be given in writing in the following manner:
 - (A) By giving the notice to the customer personally; or
 - (B) If the customer is absent from or unavailable at the premises at which the violation occurred, by leaving a copy with some person

of suitable age and discretion at the premises and sending a copy through the regular mail to the address at which the customer is normally billed; or

(C) If a person of suitable age or discretion cannot be found, by affixing a copy in a conspicuous place at the premises at which the violation occurred and also sending a copy through the regular mail to the address at which the customer is normally billed.

(3) The notice shall contain a description of the facts of the violation, a statement of the possible penalties for each violation, and a statement informing the customer of the right to a hearing on the merits of violation pursuant to Section 67.3808.

(d) It shall be unlawful for any person, corporation or association to violate the provisions of this Division. Violations of these provisions shall be a misdemeanor subject to penalties provided in San Diego Municipal Code section 12.0201. The Water Department can alternatively seek injunctive relief in the Superior Court pursuant to San Diego Municipal Code section 12.0202 or pursue any administrative remedy provided in Chapter 1. In addition to any other remedies which the Water Department may have for the enforcement of this Division, service of water shall be discontinued or appropriately limited to any customer who willfully uses water in violation of any provision of this Division.

(e) It shall be a misdemeanor for any unauthorized tampering of a flow restrictor placed at the customer's residence pursuant to this Section.

§67.3810 Severability

If any provision, section, subsection, sentence, clause or phrase of this Division, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the invalidity of the remaining portions of this Division shall not be affected, it being the intent of the City Council in adopting this Division that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this Division are declared to be severable for that purpose.

§67.3811 Citations

Code compliance officers/code compliance supervisors of The City of San Diego are hereby authorized, empowered and given the duty to enforce provisions of the San Diego Municipal Code and misdemeanors designated in the State Codes to issue citations for violations of said Codes under the provisions of Sections 836.5 and 853.6 of the Penal Code of the State of California when violations occur in the City of San Diego.

§67.3812 Publication of Terms of Water Use

That upon such emergency declaration by the City Manager, it shall be his duty to have public notice given by publishing a notice giving the extent, terms and conditions respecting the use and consumption of water, at least once in the official newspaper of said City; that upon such declaration and publication of such notice due and proper notice shall be deemed to have been given each and every consumer supplied with water by The City of San Diego.